

APPEAL NO. 042896  
FILED DECEMBER 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 18, 2004. In Texas Workers' Compensation Commission Appeal No. 040002, decided February 13, 2004, the Appeals Panel had remanded the case for the appointment of a second designated doctor (the first designated doctor was no longer able to perform) to assess the respondent's (claimant) impairment rating (IR) as of the stipulated maximum medical improvement (MMI) date of May 6, 2001, using the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). Another designated doctor, Dr. T was appointed and assessed a 16% IR. A CCH was scheduled for September 7, 2004, but the claimant failed to appear. In response to a "10 day letter" the claimant requested that the CCH be rescheduled and the rescheduled hearing on remand was held on October 18, 2004. The hearing officer determined that the claimant "had good cause for his absence at the first session of the [CCH] on Remand on September 7, 2004," and that the claimant had a 16% IR as assessed by Dr. T whose report was not contrary to the great weight of the other medical evidence.

The appellant (carrier) appeals, contending that the claimant failed to show good cause for failing to appear at the September 7, 2004, CCH and that the 16% IR was improperly calculated regarding the combining of certain conditions. The file does not contain a response from the claimant.

DECISION

Affirmed in part and reversed and rendered in part.

At the October 18, 2004, CCH the hearing officer asked the claimant why he had failed to appear at the September 7, 2004, setting and the claimant answered "I simply forgot. . . ." That was the only reason given, but the hearing officer nonetheless found the claimant had good cause for his absence. Whether good cause exists is matter left up to the discretion of the hearing officer, and the determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 002816, decided January 17, 2001, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for the existence of good cause is whether the claimant acted as a reasonably prudent person would have acted under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 94244, decided April 15, 1994. In view of the evidence presented, we cannot conclude that forgetfulness, without anything more, constitutes good cause. The hearing officer abused her discretion and acted without references to any guiding rules or principles in determining the claimant had good cause for not attending the September 7, 2004, CCH session. We reverse

the hearing officer's determination on this point and render a new decision that the claimant did not have good cause for his absence at the first session of the CCH on remand on September 7, 2004.

## THE IR

The background facts are discussed in Appeal No. 040002, *supra*, and will not be repeated here. The parties stipulated that the claimant sustained a compensable left knee injury on \_\_\_\_\_, and that the claimant reached MMI on May 6, 2001. Dr. T, the subsequent designated doctor, in a Report of Medical Evaluation (TWCC-69) and narrative assessed a 16% IR using Table 36 of the AMA Guides. Specifically, Dr. T assessed a 20% impairment under Disorder 2 "Torn meniscus and/or meniscectomy" (the claimant had two partial meniscectomies and Table 36 allowed a range of "0-25% for both menisci") combined with a 12% impairment for loss of motion which equals a 30% of the lower left extremity. Dr. T then combined that figure with a 15% impairment under Disorder 5, arthritis (Table 36 allowed a range of "0-20% according to deformity"). The 15% impairment was combined with the 30% impairment which results in a 41% lower extremity impairment which equates to a 16% whole person IR.

The carrier contends that the "arthritis should *not* have been graded and combined by the designated doctor" (emphasis in the original) citing two Appeals Panel decisions which indicate that range of motion (ROM) should not be combined with arthritis. Dr. T specifically addressed that point when he stated "[i]n order to avoid duplication, impairment for traumatic arthritis cannot be combined with impairment for [ROM], but there is no such restriction for meniscectomy." We note that Table 36 specifically provides for combining menisci "with impairment for loss of motion" and the footnote to Table 36 indicates this is done using the combined values table.

Texas Workers' Compensation Commission Appeal No. 971056, decided July 21, 1997, cited by the carrier, was a case where "the only appropriate diagnosis. . . was arthritis" and the Appeals Panel stated "Table 36 does not permit the addition of an impairment for ROM to an arthritis-based IR." We do not disagree and distinguish Appeal No. 971056, *supra*, from the present case where the claimant had partial meniscectomies and arthritis. Appeal No. 971056, also states that Table 36 "does not direct that only one diagnosis-based IR [disorder] may be assigned. . . ." Texas Workers' Compensation Commission Appeal No. 961615, decided September 26, 1996, simply says that Table 36 "did not allow a combination of chondromalacia [and also arthritis] and ROM" and that "chondromalacia is not one of the six conditions that can be combined with ROM." We agree and distinguish that case from the instant case where the claimant had both the meniscectomies (which can be combined with ROM) and arthritis.

Accordingly, we affirm the hearing officer's determination on the IR issue as being supported by sufficient evidence. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order on the IR issue is affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL  
8144 WALNUT HILL LANE, SUITE 1600  
DALLAS, TEXAS 75231.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge